

September 16, 2019

Desiree Kane  
c/o MuckRock News  
DEPT MR 78542  
411A Highland Ave.  
Somerville, MA 02144-2516

**Re: North Dakota Private Investigation and Security Board – Response to August 4, 2019 Letter and Open Records Request.**

Dear Ms. Kane:

As counsel for the North Dakota Private Investigation and Security Board (“Board”), I am responding to your August 4, 2019 letter requesting the following public records:

“A description of the permitting process for private security guards, firms, and what, if any, information is available around regulating current law enforcement or federal officers from working for private security firms.”

Under Section 44-04-18(16), N.D.C.C., it defines a “record” as “recorded information of any kind, regardless of the physical form or characteristic by which the information is stored, recorded, or reproduced, which is in the possession or custody of a public entity or its agent and which has been received or prepared for use in connection with public business or contains information relating to public business.” The definition specifically states it “does not include unrecorded thought processes or mental impressions.”

The information requested by you seeks a specific description of the process by which the Board permits and licenses private security officers. This falls outside the definition of a public record, as it is not an identifiable document in the possession of the Board.

To the extent the board can respond and provide a description of the permitting process, you may look to the following web addresses found on the Board’s public site and listed below:

<http://www.nd.gov/pisb/adminrules.html>

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<http://www.nd.gov/pisb/centcode.html>

<http://www.nd.gov/pisb/faq.html>

<http://www.nd.gov/pisb/elig.html>

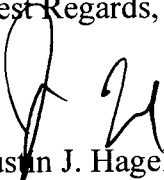
<http://www.nd.gov/pisb/forms.html>

These web addresses list the administrative rules of the Board and North Dakota statutes granting the Board its authority and regulating its operation, along with answers to frequently asked questions regarding permitting and licensure, information on eligibility and licensing requirements, and the forms used for licensure and registration.

Your request also sought information related to regulating current law enforcement or federal officers working as a private security officer. Attached with this letter is a copy of a legal memoranda which addresses licensing and registration of law enforcement officers as private security providers.

Please call this office if you have any questions regarding these documents or the disclosure process.

Best Regards,



Justin J. Hagel

February 26, 2016

**VIA MAIL AND EMAIL**

Bill Butcher, Chair  
513 Bismarck Expressway, Ste. 5  
Bismarck, ND 58504

**Re: Our File No.: 049212.15000**

Dear Chairman Butcher:

The Board has requested a legal opinion as to the following questions:

1. Whether an out-of-state peace officer on inactive status in his or her home state may be licensed/registered by the Board to provide private security services, and;
2. Whether an active duty North Dakota Peace Officer may be licensed/registered by the Board to provide private security services.

As is explained below, it is my opinion that the Board may license or register an out-of-state peace officer who is on inactive status in his or her home state to provide private security services.

The North Dakota Private Investigative and Security Board licenses and registers both private investigative and private security services. The Board's authority to license and register services is derived from North Dakota Century Code Chapter 43-30. The Board has also adopted administrative rules contained in Chapter 93-02 of the North Dakota Administrative Code.

"A person may not provide private investigative or security services without a license issued by the board." N.D.C.C. § 43-30-05. Under N.D.C.C. § 43-30-05.2 the Board is authorized to issue a license "to an individual who is a peace officer if the license issued to that peace officer under chapter 12-63 is on inactive status."

The question presented is whether a person on inactive status in another state, under similar terms as contained in chapter 12-63, should be treated the same for license purposes as indicated in N.D.C.C. §43-30-05.2. As to this issue, the statute is ambiguous and therefore must be construed and interpreted by the Board.

A statute is ambiguous when it is susceptible to differing, but rational, meanings. Buchholz v. City of Oriska, 2000 ND 115, ¶ 2, 611 N.W.2d 886. Statutes must be harmonized to give meaning to

related provisions and must be construed in their plain, ordinary, and commonly understood meaning. Id. The goal in interpreting a statute is to give meaning and effect to every word, phrase, and sentence in a statute. Treiber v. Citizens State Bank, 1999 ND 130, ¶ 17, 598 N.W.2d 96; see also N.D.C.C. § 1-02-03 (providing words and phrases of a statute must be construed according to the context). The North Dakota Supreme Court has explained that North Dakota Courts are to defer to the interpretation of a statute by the agency administering the law unless that interpretation contradicts clear statutory language. Saari v. North Dakota Workers Comp. Bureau, 1999 ND 144, ¶ 20, 598 N.W.2d 174.

When construing an ambiguous statute, the interpretation should be consistent with legislative intent and to further the statutes' policy goals and objectives. The North Dakota Supreme Court has explained that it "presume[s] the [l]egislature did not intend an unreasonable result or unjust consequence." Id. (quoting Haugenoe v. Workforce Safety & Ins., 2008 ND 78, ¶ 8, 748 N.W.2d 378). In construing statutes, the Court will consider "the context of the statutes and the purposes for which they were enacted." Falcon v. State, 1997 ND 200, ¶ 9, 570 N.W.2d 719 (quoting Van Klotwyk v. Arman, 477 N.W.2d 590, 592 (N.D.1991)) ("The interpretation of a statute is a fully reviewable question of law, 'and our primary objective is to ascertain the intent of the legislature by looking at the language of the statute itself and giving it its plain, ordinary and commonly understood meaning. Consideration should be given to the context of the statutes and the purposes for which they were enacted.' ").

Some of the intent underlying the prohibition of licensing active duty peace officers is contained in N.D.A.C. §93-02-02.1-11(2) which prohibits the licensing of persons who have "police-type powers" or who have "access to any official law enforcement records." Based on this intent, I believe the proper method of interpreting N.D.C.C. § 43-30-05.2 is that the Board is authorized to license an individual who is a peace officer if the license issued to that peace officer is on inactive status under chapter 12-63 or similar statute in the state that issued the license. I believe this interpretation is consistent with the intent of the statute.

You have also requested that I provide an opinion concerning the licensing or registering of active duty law enforcement officers. It is my opinion that active duty law enforcement officers may not be licensed by the Board. See N.D.A.C. §93-02-02.1-11(2). It is my opinion, however, that the Board may register active duty law enforcement officers.

Under N.D.C.C. § 43-30-01(3), as it pertains to the Board, the term "license" includes a registration issued by the Board. The use of the word "includes" indicates that in some contexts in Chapter 43-30 the use of the word "license" also means "registration" and in some contexts it does not. When read as a whole, Chapter 43-30 clearly differentiates, in some contexts, between the qualifications for holding a license and the qualifications for holding a registration. Thus, the question is whether the governing statute and administrative rules differentiate between the licensing of active duty peace officers and the registering of active duty peace officers. It is my opinion that the governing statutes and rules do make this distinction.

This interpretation is consistent with the legislative history including the testimony of Executive Director Francine Johnson on January 31, 2011, in which Ms. Johnson clearly explained that the Board prohibits "those individuals who are involved in law enforcement to hold the license. We are not prohibiting them from being an employee of an already established licensed agency."

Based on the foregoing, it is my opinion that the use of the word "license" in N.D.A.C. §93-02-02.1-11(2) does not include "registration" and therefore that rule does not apply to the registration of active duty peace officers.

If you have any questions or wish to further discuss this matter please contact me.

Sincerely,

A handwritten signature in black ink, reading "Monte L. Rogneby". The signature is fluid and cursive, with the first name "Monte" being particularly prominent.

Monte L. Rogneby  
Special Assistant Attorney General

MLR/smo

cc: Executive Director Francine Johnson via email only